

## FPPC Advice Summaries

Formal written advice provided pursuant to Government Code section 83114 subdivision (b) does not constitute an opinion of the Commission issued pursuant to Government Code section 83114 subdivision (a) nor a declaration of policy by the Commission. Formal written advice is the application of the law to a particular set of facts provided by the requestor. While this advice may provide guidance to others, the immunity provided by Government Code section 83114 subdivision (b) is limited to the requestor and to the specific facts contained in the formal written advice. (Cal. Code Regs., tit. 2, §18329, subd. (b)(7).)

Informal assistance may be provided to persons whose duties under the act are in question. (Cal. Code Regs., tit. 2, §18329, subd. (c).) In general, informal assistance, rather than formal written advice is provided when the requestor has questions concerning his or her duties, but no specific government decision is pending. (See Cal. Code Regs., tit. 2, §18329, subd. (b)(8)(D).)

Formal advice is identified by the file number beginning with an "A," while informal assistance is identified by the letter "I."

## Campaign

**C. April Boling, CPA**  
**San Diego Police Officers Association**  
**Dated: October 3, 2002**  
**File Number: A-02-118**

A union need not transfer funds collected from members by payroll deduction to a separate checking account.

**Marcie Burgess**  
**Anaheim Police Officers PAC**  
**Dated: October 16, 2002**  
**File Number: A-02-250**

Volunteer precinct walking by board members or regular members of a PAC does not, by itself, constitute "coordination" with a candidate which would render independent expenditures made by

the PAC on behalf of endorsed candidates contributions. But PAC members who wish to walk precincts for an endorsed candidate should be cautioned not to have any discussions about the PAC's plans for independent expenditures with the candidate or campaign staff.

**Diane M. Fishburn**  
**Office of Insurance Commissioner**  
**Dated: October 8, 2002**  
**File Number: A-02-257**

A candidate for statewide office in the November 5, 2002, election is not subject to the contribution limits imposed by Government Code §§ 85301 and 85302 to pay net debts of the committee in connection with that election. The candidate may accept post-election contributions in excess of the limits imposed by §§ 85301 and 85302 for the payment of those debts, and if the debts consisted of loans made to the committee prior to the election, the loans could also be forgiven in amounts in excess of those limits. The Commission has not yet decided whether a candidate for statewide elective office in the November 5, 2002, election, may continue to accept contributions in excess of the limits imposed by §§ 85301 and 85302 after his or her election-related debts have been repaid.

**David Bauer**  
**Irvine Homeowners Association**  
**Dated: October 4, 2002**  
**File Number: A-02-259**

Other than major donor filing requirements, the Act does not impose additional filing obligations on a person who contributes to a committee that receives contributions for the purpose of making independent expenditures and which has identified several candidates who will be the targets of the independent expenditures. Under section 85501, a candidate's controlled committee may not make contributions to a committee that is set up to make independent expenditures supporting or opposing candidates.

**Diane M. Fishburn**  
**Office of Treasurer**  
**Dated: October 25, 2002**  
**File Number: A-02-271**

This letter discusses the use of funds held by a statewide candidate on November 6, 2002, for fu-

*(Continued on page 16)*

(Continued from page 15)

ture elections, pursuant to section 85306(c) of the Act. Among other things, the letter concludes that the 2002 committee of a statewide candidate may transfer funds held by the committee on November 6, 2002, after that date to a committee that the candidate may form for a different statewide office in the 2006 election.

**Chris Everman**  
**SacCity On-Line Campaign Filing**  
**Dated: September 27, 2002**  
**Our File Number: I-02-012**

On campaign reports, controlled committees must itemize payments made by officeholders for civic donations and contributions at the threshold of \$100, under section 84211(k).

**Thomas W. Hiltachk**  
**California Republican Party**  
**Dated: September 20, 2002**  
**Our File Number: A-02-233**

Regulation 18531.7 was withdrawn by the Commission pending reconsideration of the regulation at its October 2002 meeting. Any revisions which may occur at the October meeting would not alter the Commission's prior determination that the regulation does not govern conduct by the California Republican Party.

**Aldo Giacchino**  
**City of Santa Cruz**  
**Dated: September 27, 2002**  
**Our File Number: A-02-235**

Payments for legal expenses incurred by a candidate in an effort to challenge whether or not his opponents' names should appear on the ballot are campaign "expenditures." As such, they must be paid for from campaign funds and reported on the candidate's campaign statements.

**C. April Boling, CPA**  
**San Diego County Republican Central Committee**  
**Dated: September 26, 2002**  
**Our File Number: A-02-262**

Payments by a political party committee, that otherwise may constitute "member communications," nonetheless trigger a pre-election filing requirement. Pursuant to section 85312, political party committees' reporting obligations with respect to "member communications" are the same as they were before

the voters adopted Proposition 34 and section 85312.

**Leslie Cook, CMC**  
**City of Santa Cruz**  
**Dated: August 6, 2002**  
**File Number: I-02-061**

A request that the Commission review the campaign ordinance for the City of Santa Cruz to ensure that the ordinance does not conflict with the Political Reform Act is addressed in this letter.

**Diane Fishburn**  
**CalPERS**  
**Dated: August 22, 2002**  
**File Number: I-02-196**

This letter addresses when an election cycle commences for CalPERS elections and the filing obligations belonging to primarily formed committees for a CalPERS board election.

**Laurence S. Zakson**  
**Laborers International Union of North America, Local 300**  
**Dated: July 9, 2002**  
**Our File Number: A-01-195**

A labor union which qualifies as a committee is required to report all payments including those made for the purpose of communicating with the organization's members.

**Jeff Koontz, Executive Director**  
**Diamond Bar Chamber of Commerce**  
**Dated: July 17, 2002**  
**Our File Number: I-02-149**

A cable television program that is produced by the chamber of commerce and co-hosted by a city council member is neither an independent expenditure nor a contribution. However, the analysis would change if the program contained express advocacy, references to the city council member's candidacy for elective office or the city council member's opponents for elective office or solicited contributions.

**John A. Ramirez**  
**Lou Lopez for Supervisor**  
**Dated: July 26, 2002**  
**Our File Number: A-02-167**

Assuming the transfer is lawful under local law, the

(Continued on page 17)

*(Continued from page 16)*

Act permits campaign funds from an individual's city council committee to be transferred to his supervisorial committee and used to repay a personal loan.

**Mark Anthony Dierolf**

**Monterey County**

**Dated: July 17, 2002**

**Our File Number: A-02-175**

A general purpose ballot measure committee is not prohibited from forming under the Political Reform Act and may be controlled by a candidate or officeholder as long as the committee does not make payments supporting or opposing candidates, including the controlling candidate.

**Cynthia A. Trujillo, CMC**

**City of San Gabriel**

**Dated: July 11, 2002**

**Our File Number: I-02-177**

The combination of the semi-annual and first pre-election campaign filing deadlines in connection with the City of San Gabriel's August 27 ballot measure election is discussed.

**Andrea Leiderman**

**Friends of Andrea Leiderman**

**Dated: July 25, 2002**

**Our File Number: A-02-181**

A local candidate may redesignate an existing committee only for future election to the same office. Surplus campaign funds may not be used for expenses associated with either running for or holding future office.

**Gabriel A. Godinez, City Clerk**

**City of Arvin**

**Dated: July 24, 2002**

**Our File Number: I-02-186**

The combination of the second pre-election and semi-annual campaign statements in connection with the city's August 13 special mayoral election is addressed.

**Cheryl I. Butler**

**Court of Appeal**

**Dated: July 29, 2002**

**Our File Number: I-02-187**

Candidates for appellate court justice are not required to file a statement of economic interests.

Successful incumbent candidates must continue to file annually.

**Elliott Cohen**

**City of Berkeley**

**Dated: July 29, 2002**

**Our File Number: I-02-191**

This letter discusses the statements that must be filed when an individual qualifies as a candidate under section 82007.

## Conflict of Interest

**Rory Jaffe, M.D.**

**U.C. Davis**

**Dated: October 31, 2002**

**File Number: I-02-154**

The conflict of interest provisions of the Act do not apply to a doctor's decisions with respect to a specific patient's course of treatment.

**Michael F. Harris**

**Dept. of Fish & Game**

**Dated: October 18, 2002**

**File Number: A-02-239**

An agency is advised on the issues surrounding the hiring of an outside "consultant" to assist the agency in the formation of a Request for Proposal for an automated data system. The letter concludes that the outside contractor would not be a "consultant" for purposes of the conflicts provisions of the Act.

**Robert Ovrom**

**City of Burbank**

**Dated: October 3, 2002**

**File Number: A-02-254**

A public official cannot participate in a governmental decision that has a personal financial effect on the official or a member of his or her immediate family. However, if the family member who will be affected financially by the decision is an adult child, as in this case, no conflict of interest exists for the public official.

**The Honorable George C. Runner, Jr.**

**California Assembly**

**Dated: October 4, 2002**

**File Number: I-02-267**

The Assembly member asked about the duties of

*(Continued on page 18)*

*(Continued from page 17)*

an individual who was a candidate for a local hospital district and possibility that the individual would have conflicts of interest were he to be elected. Commission staff declined to advise the Assembly member regarding another's duties under the Act. However, a general discussion of the conflict-of-interest rules of the Act was provided.

**Jean B. Savaree**

**City of Belmont**

**Dated: October 29, 2002**

**File Number: A-02-268**

A public official does not have a conflict of interest concerning a park renovation located 550 feet from his personal residence as long as it is not reasonably foreseeable that the decision will have a material financial effect on his residential property.

**Heather McLaughlin**

**City of Benicia**

**Dated: September 6, 2002**

**Our File Number: A-02-045**

The members of the Benicia City Council and the city manager, who have real property interests within 500 feet of the boundaries of a storm drain project area, are advised that those interests are indirectly involved in project decisions. The project qualifies under regulation 18704.2(a)(5) as a "repair, replacement, or maintenance of streets, water, sewer, storm drainage or other facilities" and the public officials' economic interests in real property are thereby deemed indirectly involved in the project decisions. It is presumed that project decisions will have no material financial effect on indirectly involved real property interests.

**Marguerite P. Battersby**

**City of Highland**

**Dated: September 25, 2002**

**Our File Number: A-02-216**

A commissioner does not have a conflict of interest provided he does not have an economic interest in his adult son.

**Orry P. Korb, Town Attorney**

**Town of Los Gatos**

**Dated: September 20, 2002**

**Our File Number: I-02-224**

A public official does not have a conflict of interest on a permit application regarding the location of a

wireless communication facility, as long as the wireless communication company does not have a reasonably foreseeable material financial effect on the public official's business or its clients.

**Milan Petrovich, Vice Mayor**

**Brentwood City Council**

**Dated: September 19, 2002**

**Our File Number: A-02-225**

A city council member with ownership interest in a commercial office building located within a project study area has a conflict of interest prohibiting his voting to approve or disapprove siting of a new city parking structure within this study area. He may not vote on competing site locations unless the decision on siting the structure within the first area has been previously segregated and made without his participation. He may participate in subsequent siting decisions as long as they do not re-generate the decision from which he is disqualified.

**Brien J. Farrell**

**City of Santa Rosa**

**Dated: September 30, 2002**

**Our File Number: I-02-227**

A mayor who is also a paid executive director of a non-profit organization does not have a conflict of interest barring his participation in decisions having a material financial effect on members of the organization since those members do not control the personnel and other decisions of the organization. Although a nexus might exist between the mayor's decisions in public office and the purpose of his private employment, since the governmental decisions will have no material financial effect on his private employer, regulation 18705.5 applies and the mayor will not have a disqualifying conflict of interest. The "nexus test" applies to a public official who is also a high-level private employee with direct influence or control over his or her employer's management or policy decisions. The "nexus test" does not ordinarily apply to mid-level employees.

**Heather C. McLaughlin**

**City of Benicia**

**Dated: September 16, 2002**

**Our File Number: A-02-231**

A council member may participate in decisions regarding the use of in-lieu fees to upgrade a park-

*(Continued on page 19)*



*(Continued from page 18)*

ing lot within 500 feet of his real property where the decisions concerning the upgrade to the parking lot are legally limited to the area of the lot beyond 500 feet of the council member's property, and these decisions are not interrelated to any decisions affecting any sites within 500 feet of the council member's property.

**Linda L. Daube**  
**City of Pittsburg**  
**Dated: September 25, 2002**  
**Our File Number: A-02-232**

The letter addresses whether shares of stock in a corporation held by two planning commissioners give rise to a conflict of interest for the planning commissioners with respect to decisions on two projects.

**Clothilde V. Hewlett**  
**Department of General Services**  
**Dated: September 25, 2002**  
**Our File Number: I-02-234**

The Department of General Services requested advice regarding their contractor/consultant whose scope of work included providing technical/professional advice to the state in selecting and developing a site for a state building (the new courthouse for the Fifth District Court of Appeal in Fresno). The consultant was hired as the engineer/architect for the new building. The developer of the site chosen also hired this consultant to provide engineering/architectural services for their half of the same site. This created a potential conflict of interest. The consultant's income from the developer may require him to be disqualified from making, participating in making or influencing a governmental decision by providing technical and professional advice to the State in developing the site. Since the request included past conduct, only general conflict-of-interest advice was provided.

**Heather Mc Laughlin**  
**City of Benicia**  
**Dated: September 17, 2002**  
**Our File Number: I-02-236**

The letter provides follow-up advice on behalf of two council members regarding council decisions pertaining to the use of two city lots. One council member owned property within 500 feet of one of the lots, and the other council member owned

property within 500 feet of the second lot. Since the two lot decisions were inextricably related, the decisions could not be segmented and both council members were disqualified as to both decisions.

**Clare M. Gibson**  
**City of Larkspur**  
**Dated: September 4, 2002**  
**Our File Number: A-02-237**

Rental of a business office on a month-to-month basis does not constitute an interest in real property. However, decisions that may affect personal finances by \$250 or more in a 12-month period (such as rent) would create a conflict of interest.

**Ron Rogers**  
**Imperial Beach City Council**  
**Dated: September 16, 2002**  
**Our File Number: I-02-238**

Pursuant to regulation 18705.2(b), the financial effect on the individual source of income's real property is presumed not to be material, absent specific circumstances. This would be the case irrespective of the proximity of the source's property to the project site.

**Harry A. Knapp, Mayor**  
**City of South Pasadena**  
**Dated: September 20, 2002**  
**Our File Number: A-02-240**

A member of the planning commission may make presentations before the design review board on behalf of clients of her architectural business. She may not, however, purport to be a member of the planning commission while making those presentations. Additionally, the planning commissioner may respond to necessary contact with agency staff concerning the processing or evaluation of drawings.

**Anthony J. Portantino**  
**La Cañada/Flintridge**  
**Dated: September 20, 2002**  
**Our File Number: A-02-242**

A council member is advised that decisions on a property subdivision when that property is located 1,555 feet from the council member's residence, are presumed not to have a material financial effect on the council member's residence. The presence of special circumstances relating to the deci-

*(Continued on page 20)*

(Continued from page 19)

sion that affects the neighborhood in which his residence is located is a factual question, as is the delineation of his neighborhood, that varies according to the circumstances. There is no uniform rule defining a specific geographic area as "the neighborhood" for purposes of determining a decision's effect upon characteristics of the neighborhood in which is located a public official's real property interest.

**Milan Petrovich, Vice Mayor**  
**City of Brentwood**  
**Dated: September 25, 2002**  
**Our File Number: I-02-245**

A public official owns a restaurant that serves the public and offers catering as well. He is prohibited from voting in any governmental decision that will have a direct or indirect material financial effect on any of his sources of income. Since he owns 50 percent of the business, any source of income to the business in the 12-month period before a governmental decision of which his pro rata share is worth \$500 or more is a potentially disqualifying economic interest.

**Michael R. Jones**  
**City of Chico**  
**Dated: September 25, 2002**  
**Our File Number: I-02-256**

Conflicts of interests under the Act are based on financial effects. Thus, so long as a park commissioner does not make, participate in making, or influence a decision in which he has an economic interest, the commissioner will not have a conflict of interest. This is true even where the commissioner provides volunteer services to the parks department.

**John F. Petrini**  
**City of Bakersfield**  
**Dated: September 27, 2002**  
**Our File Number: A-02-263**

The Bakersfield mayor does not have a conflict of interest preventing him from presenting his solely owned company's rate change application to the city council for approval. Under regulation 18702.4(b)(1), a public official is not "influencing" a governmental decision when he or she appears before the agency as a member of the general public to represent himself or herself on matters related solely to the official's personal interests, including an inter-

est in a business wholly owned by the official or members of his or her immediate family. The mayor may not invoke the "legally required participation" exception to cast a tie-breaking vote on the city council's consideration of the rate change application. The same holds true even should the application be presented by a company employee other than the mayor.

**Claire M. Sylvia**  
**SF Board of Education**  
**Dated: August 27, 2002**  
**Our File Number: I-02-176**

The terms "salary, per diem or reimbursement for expenses" in regulation 18232, which interprets and applies the "government salary exception" to the definition of "income" at § 82030(b)(2), are sufficiently broad to include various collective bargaining provisions in a school district's agreement with the teachers' union.

**Larry Broedow**  
**State Allocation Board**  
**Dated: August 29, 2002**  
**Our File Number: I-02-206**

An individual who becomes employed at an Assembly member's field office must disqualify himself from participating in decisions affecting any source of income. Additionally, the individual cannot use his position with the Assembly member to influence any decision before any other governmental agency if the decision will affect a source of income.

**Steven T. Mattas**  
**City of Milpitas**  
**Dated: August 22, 2002**  
**File Number: A-02-076**

Based on the analysis of factors described in regulation 18706(b), it is not reasonably foreseeable that a planning commissioner's economic interests will be materially affected by a decision on a housing element.

**Marguerite P. Battersby**  
**City of Adelanto**  
**Dated: August 12, 2002**  
**File Number: I-02-141**

A city attorney was advised that since Govt. Code § 995 entitles the mayor to a defense in a civil action over his on-the-job decisions at public ex-

(Continued on page 21)

*(Continued from page 20)*

pense, the mayor has no economic interest in his personal finances at stake, and may vote on those decisions concerning litigation against the city or himself, in his official capacity. Regulation 18702.4 permits the mayor to be involved in the city's decision whether to retain separate counsel for his defense, since this decision is considered a decision relating to the terms or conditions of his employment. Plaintiff city council members do not fall under Govt. Code § 995 and thus, their personal finances may be affected by governmental decisions concerning this litigation, and they have a disqualifying conflict of interest.

**Heather C. McLaughlin**

**City of Benicia**

**Dated: August 7, 2002**

**File Number: A-02-132**

The officials have a conflict of interest with respect to both the sale of the lot beyond the 500-foot boundary as well as the construction of the affordable housing units within the 500-foot boundary if the decisions are interlinked. If the decisions may be segregated, one of the officials can participate in the decisions.

**George Fuller**

**Teachers Association of West Covina**

**Dated: August 20, 2002**

**File Number: I-02-189**

General advice is provided concerning what constitutes a gift and details are given describing the disclosure requirements for a gift. This advice letter also gives a general conflict-of-interest analysis concerning gifts, as well as a segmentation overview.

**Shahir Haddad**

**Department of Toxic Substances Control**

**Dated: August 28, 2002**

**File Number: I-02-199**

A general discussion of conflict-of-interest laws as applied to an engineer for the Department of Toxic Substances Control who wants to obtain part-time consulting employment in addition to his present employment.

**Lee Yarborough**

**Transportation Agency of Monterey County**

**Dated: August 13, 2002**

**File Number: G-02-212**

No advice provided on incompatible offices. General assistance regarding conflicts of interest.

**Howard Laks, AIA**

**City of Santa Monica**

**Dated: August 16, 2002**

**File Number: A-02-215**

A member of the Santa Monica Architectural Review Board was advised that he may appear before the city planning commission in his private capacity, to present an appeal of an ARB ruling against his client's development proposal. The planning commission is not the same agency as, or under the budgetary authority of the ARB. In this presentation, the official must not represent himself as speaking in his official capacity.

**Frederick G. Soley, City Attorney**

**Vallejo City Council**

**Dated: July 3, 2002**

**Our File Number: A-01-306**

The members of the council may participate in decisions regarding the residential rental inspection program if their real property interests will not be affected in a manner different from the public generally.

**David R. Hunt**

**City of Pismo Beach**

**Dated: July 10, 2002**

**Our File Number: A-02-073**

The concerns of three different public officials regarding participation in the adoption of a specific plan and their possible conflicts of interest are addressed in this letter. Each public official was found to have a disqualifying conflict of interest.

**Kathryn E. Donovan**

**Office of the Treasurer**

**Dated: May 1, 2002**

**Our File Number: A-02-078**

With respect to a blind trust established by the State Treasurer, the treasurer may not prescribe in the trust instrument certain categories of assets to which the trustee would be limited in investing the assets of the trust, even with the trustee given

*(Continued on page 22)*

*(Continued from page 21)*

complete discretion within the parameters of the various categories, because regulation 18235 provides that the trustee is to have complete discretion in managing the trust. If the filer prescribes the categories of assets in which the trustee may invest, it would infringe on the trustee's discretion, and would begin to erode the separation between the trustee and the public official that is critical to the concept of the blind trust as a vehicle for removing obstacles to investments by public officials. Other issues related to blind trusts are considered and regulation 18235 is construed.

**Diane L. Dillon**  
**Napa County Board of Supervisors**

**Dated: July 16, 2002**

**Our File Number: I-02-082**

The letter addresses identification of the economic interests of a public official, including those based on the official's partnership in a law firm.

**Leslie E. Murad, II**  
**Redlands City Council**

**Dated: July 22, 2002**

**Our File Number: I-02-100**

A council member is advised that since her ownership interest as a partner in her employer's accounting firm is less than 10 percent, clients of the accounting firm are sources of income to her and are not among her economic interests under the Act. Thus, she may vote on city council decisions concerning clients served by the accounting firm.

**Dawn C. Honeywell**  
**City of Irwindale**

**Dated: July 24, 2002**

**Our File Number: I-02-101**

The city attorney is advised that conflict-of-interest provisions of the Act do not bar a public official, when acting in a private capacity, from retaining a general contractor who also performs work for the city. Public officials may also apply for benefits under publicly funded housing programs, but may not subsequently make, participate in making or influence any governmental decisions concerning their application. A city council member receiving these benefits may vote on changes to the housing benefits program, pro-

vided that the program changes cannot be reasonably foreseen as affecting his or her personal finances by \$250 or more over a 12-month period, unless the "public generally" exception applies.

**Julie Hayward Biggs**  
**City of Goleta**

**Dated: July 10, 2002**

**Our File Number: A-02-102**

A discussion of regulation 18707.1 and the application of the "public generally" exception. The "public generally" exception likely would apply where the public official's primary residence will be affected in substantially the same manner as all those property owners near the site in question. The public official must make this determination, since the Commission does not act as a finder of fact.

**John E. Brown**  
**City of San Jacinto**

**Dated: July 19, 2002**

**Our File Number: A-02-103**

The "public generally" exception will not apply in a conflict-of-interest decision before the vice mayor because one or more of his economic interests will experience a unique financial effect as a result of the decision.

**Victoria Pointer, Mayor Pro Tem**  
**City of Buellton**

**Dated: July 16, 2002**

**Our File Number: A-02-128**

Members on a city council inquire as to their participation in a vote affecting real property beyond 500 feet from their homes. Because it was unclear whether the construction of a street extension would lend itself to a substantial increase in traffic within 500 feet of the two council members' respective homes, staff could not reach a definitive conclusion whether a conflict of interest exists.

**Stephen P. Deitsch, City Attorney**  
**City of Big Bear Lake**

**Dated: July 2, 2002**

**Our File Number: A-02-129**

Exceptions to the Act's conflict-of-interest rules are narrowly construed. Regulation 18702.4(b)(1)

*(Continued on page 23)*



*(Continued from page 22)*

(C) provides an exception where an official may represent his or her "personal interests" in a business over which the official exercises sole direction and control. The exception is limited to a situation where there are no other personnel of the company who may be delegated the authority to appear before the official's body.

**Daniel S. Hentschke**  
**San Diego County Water Authority**

**Dated: July 26, 2002**

**Our File Number: A-02-142**

It is reasonably foreseeable that a public official's economic interests will experience a material financial effect where the economic interest is directly involved in the governmental decision.

**Howard Laks, AIA**  
**City of Santa Monica**

**Dated: July 29, 2002**

**Our File Number: A-02-155**

The discussion concerns whether a member of an architectural review board, also a private architect, is allowed to present a client's appeal of an architectural review board decision to the planning commission. The architect is allowed to present to the planning commission so long as: 1) the planning commission is not appointed by or subject to the budgetary control of the public official's agency, and 2) the public official does not purport to act in an official capacity as an architectural review board member.

**Ron L. Cotten, Treasurer**  
**Macedo for Manteca City Council**

**Dated: July 24, 2002**

**Our File Number: A-02-157**

A sale of an improved vacant building site for fair market value is not a gift under the Act even though the seller does not typically engage in this type of sale. However, if the lot was considered to be a gift, then the purchase may affect the public official's ability to vote on issues concerning the seller. The burden is on the public official to prove that adequate consideration was provided by the official.

**Marcia H. Armstrong**  
**Siskiyou County Farm Bureau**

**Dated: July 16, 2002**

**Our File Number: I-02-166**

The conflict-of-interest provisions will not apply until this elected city council member assumes office. At that time, all economic interests including the income from her employer, could be the basis for a conflict of interest.

**Gary T. Ragghianti**  
**City of Larkspur**

**Dated: July 10, 2002**

**Our File Number: A-02-170**

A council member owns residential property within 500 feet of a proposed project. He may participate in the specific plan decisions regarding the project if, in fact, there will be no financial effect on his residential property.

**Don Ramos**  
**Aptos/La Selva Fire District**

**Dated: July 22, 2002**

**Our File Number: I-02-173**

The Act does not prohibit a public official from holding a position on the same board on which his spouse serves.

**The Honorable John Campbell**  
**State Assembly**

**Dated: July 17, 2002**

**Our File Number: I-02-180**

A legislator may have a conflict of interest in a vote on legislation that will have a foreseeable and material financial effect on his source of income. However, if the effect will be substantially the same as the effect on the public generally, the legislator may vote despite the conflict of interest.

**Adolfo E. Miralles, FAIA**  
**West Altadena Project Area Committee**

**Dated: July 25, 2002**

**Our File Number: I-02-182**

An architect and member of a project area committee may prepare and submit drawings or submissions of an architectural nature on behalf of the developer. However, the public official's contact with agency staff is limited to responding to staff questions, obtaining clarification of staff requests, and communicating with staff regarding

*(Continued on page 24)*

(Continued from page 23)

the movement of submissions through the approval process. The public official may not appear before his own committee in representing a client's interests.

**Drusilla van Hengel**  
**City of Santa Barbara Public Works**  
**Department**  
**Dated: July 25, 2002**  
**Our File Number: A-02-183**

A public official who owns residential property within an area designated for a pilot program may not participate in decisions regarding the pilot program.

**Lisa A. Grigg**  
**Tahoe City Public Utility District**  
**Dated: July 29, 2002**  
**Our File Number: I-02-184**

A member of the board of directors of a public utility district may vote on a new policy that would provide the same health insurance benefits to employees of the district involved in domestic partnerships, which are already available to other employees with spouses, because the decisions will not affect the official's personal finances beyond the salary and benefits the official receives from his or her governmental agency.

**Thomas R. Egan**  
**City of Costa Mesa**  
**Dated: July 29, 2002**  
**Our File Number: I-02-194**

Nothing in the Act prohibits the requestor from running for or holding office in the same city for which his wife is a planning commissioner.

**Howard Laks, AIA**  
**City of Santa Monica**  
**Dated: July 29, 2002**  
**Our File Number: A-02-195**

The discussion concerns whether a member of an architectural review board, also a private architect, is allowed to discuss a client's project with city planning staff and appear before the planning commission, the landmarks commission or the city council. The architect is allowed to present and discuss so long as: 1) each agency is not appointed by or subject to the budgetary control of the public official's agency, and 2) the public official

does not purport to act in an official capacity as an architectural review board member.

## Conflict-of-Interest Code

**Robert Dresser**  
**CA Labor & Workforce Development Agency**  
**Dated: October 11, 2002**  
**File Number: A-02-249**

The staff on loan to the new California Labor & Workforce Development Agency ("CLWDA") from other state agencies must continue to file statements of economic interests under the conflict of interest codes for the other agencies. Individuals designated in CLWDA's conflict of interest code will be required to file once a code has been approved for CLWDA. Recently enacted legislation will require members of any boards and commissions created by CLWDA on or after January 1, 2003, to file statements in the same manner as those individuals required to file pursuant to section 87200, until CLWDA includes them in its code. (Section 87302.6 added by SB 1620 (Knight), signed by the Governor on August 24, 2002, effective January 1, 2003.)

**Alister McAlister**  
**California Legislature**  
**Dated: October 31, 2002**  
**File Number: A-02-273**

A former member of the Legislature is advised that funds raised prior to 1989 are governed by the Elections Code.

**Dan Carter**  
**Yosemite Sierra Visitors Bureau**  
**Dated: September 12, 2002**  
**Our File Number: A-02-202**

The Yosemite Sierra Visitors Bureau is not a local governmental agency and does not need to adopt a conflict of interest code.

**Val R. Fadely**  
**Capistrano Unified School District**  
**Dated: September 26, 2002**  
**Our File Number: A-02-223**

A charter school operated by a nonprofit public benefit corporation is a local government agency (pursuant to the *Siegel* opinion). It must adopt a

(Continued on page 25)

*(Continued from page 24)*

conflict of interest code and the board members are subject to the disclosure (SEI) and disqualification (conflict of interest) provisions of the Act.

**David R. Chapman**  
**Port of San Diego**  
**Dated: August 20, 2002**  
**File Number: A-02-115**

The San Diego Port District seeks clarification of the port district's jurisdiction for purposes of financial reporting under § 87302 of the Act. The port district was advised that their jurisdiction for financial reporting purposes, extends to the geographic boundaries within which the port district exercises any facet of its jurisdiction. In light of 1996 amendments to the San Diego Unified Port District Act, the financial reporting obligations extend to economic interests located in the corporate areas of San Diego, Coronado, Chula Vista, National City and Imperial, and the unincorporated territory in San Diego County contiguous thereto, and economically linked to the development and operation of San Diego Bay.

## Honoraria

**Robert Conover**  
**California Department of Insurance**  
**Dated: September 5, 2002**  
**Our File Number: A-02-207**

A senior life actuary and designated employee may accept earned income for personal services which are customarily provided in connection with the practice of a bona fide business such as teaching. These personal services do not qualify as honorarium and are not subject to those restrictions.

**Robert J. Spane**  
**Port of San Diego**  
**Dated: July 23, 2002**  
**Our File Number: A-02-094**

A port commissioner under contract with a university to teach in its program could accept payment for his services, which were provided in connection with the practice of a bona fide business, trade or profession, i.e. teaching, which is an exception to the honoraria ban. However, speaking engagements for organizations other than the uni-

versity would not meet this exception and those payments would be prohibited honoraria.

## Lobbying

**Jack T. Molondanof**  
**Holloway, Rasmusson & Molondanof**  
**Dated: October 11, 2002**  
**File Number: A-02-277**

Nothing in the Act prohibits a lobbying firm from contracting to represent a local governmental agency before the state Legislature, including a local agency the firm lobbies for other clients.

**Scott M. Lay**  
**Community College League of California**  
**Dated: September 18, 2002**  
**Our File Number: A-02-214**

A lobbyist, who also is a member of a county central committee for a major political party, is advised on compliance issues with respect to the prohibition on lobbyist contributions to those officeholders and candidates the lobbyist is registered to lobby.

## Mass Mailing

**Henry Perea**  
**City of Fresno**  
**Dated: September 27, 2002**  
**Our File Number: A-02-260**

In order for a public official to fall within the "letterhead exception" for mass mailing, there must not be any additional references made to the official in the letter, absent an additional exception as referenced in 18901(b)(1). Otherwise, a flyer sent out to residents with references to the public official from his or her office is subject to the 200-item limit.

## Gift Limits

**Michael Rood**  
**City of Calexico**  
**Dated: October 11, 2002**  
**File Number: A-02-261**

The city redevelopment agency is to be reimbursed by a Chinese investor's group for the cost of sending three city officials to China. Since the city did

*(Continued on page 26)*

*(Continued from page 25)*

not exercise sole discretion in selecting the officials to make the trip (officials were invited by the investor group and identified by office and/or name in the invitation), the exception of regulation 18944.2 does not apply. Reimbursement will be a gift to the officials, not the agency, subject to the gift limits and reporting. The gift would also invoke conflict-of-interest provisions of the Act.

**David Lau**  
**City of Monterey Park**  
**Dated: October 29, 2002**  
**File Number: A-02-282**

A raffle prize won by a city council member in a bona fide competition is considered income, thereby the amount is not constrained by the gift limits of the Act. The income is reportable on Form 700 and may subject the filer to disqualification provisions of the Act and provisions contained in Article XII, Section 7 of the California Constitution.

**Lisa A. Foster**  
**City of San Diego**  
**Dated: August 28, 2002**  
**File Number: I-02-213**

A general discussion of the concepts underlying the notion that payments made at an elected official's behest for an event honoring a public service non-profit organization are not contributions to the elected official since the payments for the event are principally for charitable purposes.

## Revolving Door

**Gail J. Hodyke**  
**Los Alamos National Lab**  
**Dated: October 3, 2002**  
**File Number: I-02-253**

The Commission will decline to provide advice in response to requests on behalf of unnamed individuals. However, there are no statutory exceptions for University of California employees from the revolving doors provisions of the Act.

**Arturo Ramudo**  
**CA Board of Accountancy**  
**Dated: October 21, 2002**  
**File Number: A-02-283**

A former employee of the California Board of Ac-

countancy ("CBA") may act as a consultant to a certified public accountant in a proceeding before the CBA to revoke the accountant's license. The former employee did not participate in this proceeding while in state service and ceased employment with CBA in 1993. Neither the one-year nor permanent bans under the Act's post-employment provisions apply in these circumstances.

**Mary A. Dixon**  
**California Health & Human Services Agency**  
**Dated: September 30, 2002**  
**Our File Number: I-02-174**

The Health and Human Services Data Center seeks advice on applying the post-employment provision's one-year ban to a situation where a former employee will be posted as a private consultant to the data center to administer, implement or fulfill the terms of an existing contract. Regulation 18746(b)(5)(A) exempts such conduct for the one-year ban, although the permanent ban would apply if the former employee participated in the administration of the contract while a state employee. An "existing contract" for this purpose also means a contract reached after the former official's departure from state service. Once the negotiating of the contract is completed, the contract is considered to be an "existing contract," as of its effective date. If performance of an existing contract results in amending, revoking, awarding or issuing any other contract, it does not render the "existing contract" exemption void and such performance still falls outside the one-year ban.

**Byron Roberts**  
**Department of Health Services**  
**Dated: September 12, 2002**  
**Our File Number: A-02-190**

A former employee of the Department of Health Services will be posted by a new private employer to the former agency to serve as a contract employee in the position of senior project manager business analyst. The former official is advised that appearances and communications with the former agency are not barred by the one-year revolving door ban since they will occur to fulfill or implement an existing contract. A new contract between the agency and the employer, once it comes into existence, is an "existing contract"

*(Continued on page 27)*



(Continued from page 26)

within the meaning of regulation 18746.1(b)(5)(A). A former state employee is not prohibited under the one-year ban from communicating with, or appearing before, his/her former agency to administer, implement or fulfill the terms of this contract.

**C. Dennis Ericson**  
**Dept. of General Services**  
**Dated: September 11, 2002**  
**Our File Number: I-02-198**

The preparation of the master contractor list was done under a former state administrative official's supervisory authority. Therefore, a permanent ban under the Act's post-employment provisions bars the former official from "switching sides" in this proceeding. Any contract executed between a contractor on this list and another state agency is a new contract and the permanent ban will not apply to that new "proceeding." In re *Lucas* (2000) 14 FPPC Ops. 15 and *Brown* Advice Letter A-91-033 are harmonized in support of this result.

**H. John Corum**  
**State Board of Equalization**  
**Dated: September 25, 2002**  
**Our File Number: A-02-258**

A former BOE employee is advised that, for purposes of the post-employment provisions of the Act, his former state administrative agency employer is the California State Board of Equalization and its constituent departments and divisions, not just the particular division thereto which he was last assigned. Contested property appraisals and tax audits are "judicial, or quasi-judicial" proceedings under the meaning of the Act and are, for that reason, not subject to the one-year ban; the former official may represent clients before the BOE concerning these matters, unless the permanent ban applies. Further, the former official may represent clients in these matters when the matter is before an administrative law judge. Section 87406(d) is a statutory exception whereby an appearance before an ALJ is not an "appearance" for purposes of the post-employment provisions of the Act.

**Steven K. Chan**  
**Board of Equalization**  
**Dated: July 24, 2002**  
**Our File Number: I-02-084**

The revolving door provisions of the Act and how

they apply to a supervising tax auditor at the Board of Equalization are addressed in this letter. Under the permanent ban, the auditor would be prohibited from aiding, advising, representing or otherwise assisting a taxpayer regarding any tax audits or other matters in which he participated or supervised as a state employee. However, the auditor would be allowed to represent the same taxpayer on a different audit with the Board of Equalization, or any other proceeding in which he was not involved. The one-year ban does not regulate tax audits.

**Barbara Brandes**  
**CA Department of Education**  
**Dated: July 11, 2002**  
**Our File Number: I-02-134**

Post-employment restrictions of the Act apply to a California Department of Education designated employee contemplating post state employment with a non-profit service organization which will contract with local educational agencies receiving state funding. The employee may not make, participate in making or use his/her official position to influence governmental decisions directly relating to or having a reasonably foreseeable material financial effect upon any party with whom the employee is negotiating prospective employment. The conflict-of-interest provisions also apply.

**Nyle Baker**  
**Prison Industry Association**  
**Dated: July 11, 2002**  
**Our File Number: A-02-151**

A former Prison Industries Authority ("PIA") manager is given advice that a permanent ban under the Act's post-employment restrictions prohibits him from advising his new employer or appearing/communicating on the new employer's behalf before the Prison Industry Authority regarding a contract in which he participated as a PIA employee. The one-year ban prohibits appearing or communicating with the PIA, but he may advise his new employer on a new contract with the PIA in which he did not participate as a state employee. The one-year ban does not prohibit communication or appearances during the one-year period for the purpose of implementing, administering or fulfilling an existing contract not subject to the permanent ban.

(Continued on page 28)

(Continued from page 27)

## Statement of Economic Interests

**Kelly Candaele**  
**LA Community College District**  
**Dated: October 10, 2002**  
**File Number: A-02-246**

A full-time, elected community college trustee may accept a gift of travel, provided the travel is paid for by a foreign government and is reasonably related to a legislative or governmental purpose or to an issue of state, national or international public policy. The gift of travel is reportable on the annual statement of economic interests.

**Mark J. Nielsen**  
**San Juan Capistrano City Council**  
**Dated: September 19, 2002**  
**Our File Number: A-02-228**

Stocks held in a diversified fund that is not a diversified mutual fund registered with the Securities and Exchange Commission must be reported if the value of the stock is \$2,000 or more. Additionally, a limited partnership interest in venture capital funds is reportable if the value of the investment in the partnership is \$2,000 or more.

**Margit Aramburu**  
**Delta Protection Commission**  
**Dated: August 30, 2002**  
**File Number: A-02-156**

For purposes of reporting, an individual assumes office when he or she is authorized to serve by being sworn in, making a governmental decision, or otherwise being authorized to serve, whichever is earlier.

**Lorraine M. Walsh**  
**Contra Costa County Superior Court**  
**Dated: August 7, 2002**  
**File Number: A-02-201**

All superior court justices have statewide jurisdiction for purposes of completing the statement of economic interests, regardless of whether their employment is permanent or temporary.

**Howard D. Coleman**  
**L.A. Transportation Commission**  
**Dated: July 8, 2002**

**Our File Number: A-02-121**

A public official must disclose on his statement of economic interests certain investments held in a structured account. While there are similarities between a structured account and a mutual fund, the particular stock holdings of the former must be disclosed given that the exception for mutual fund holdings is exclusive to mutual funds.

**Teresa Vig Rein**  
**Business and Workforce Alliance of Stanislaus County**  
**Dated: July 10, 2002**  
**Our File Number: A-02-124**

Members of the Business and Workforce Alliance of Stanislaus County, a workforce investment board, are public officials, subject to the Act's disclosure and conflict-of-interest rules.

## Small Contributor Committee/ Proposition 34

**Denise Headrick**  
**Public Employees Union Local One**  
**Dated: August 27, 2002**  
**File Number: A-02-197**

Discusses section 85203 and regulation 18503(a)(3) with regard to when and how an existing committee can become a small contributor committee. Existing committees can be "cleansed" of past contributions in excess of \$200 when a small contributor committee is initially formed. A small contributor committee is formed through creation of a new committee or an old committee amending its statement of organization.

**Andrew Cassidy**  
**Cassidy for State Assembly**  
**Dated: July 10, 2002**  
**Our File Number: I-01-296**

A candidate for state elective office may refund his or her own contributions so long as a combined loan repayment and refund does not exceed \$100,000. The letter analyzes section 85319 in the context of the "personal use" laws.

(Continued on page 29)

*(Continued from page 28)*

## Section 84308

**Fazle Rab Quadri**  
**Mojave Desert Air Quality Management District Board**

**Dated: July 1, 2002**

**Our File Number: A-02-096**

The Mojave Municipal Air Quality District Board is to vote on amendments to Rule 1161. Several board members are recipients of campaign contributions from several companies financially affected by the amendments. The board was advised that due to the unique inter-relationships between Rule 1161 and the operating permits for plants subject to the rule, and in light of the specific facts affecting the present amendments to the rule, the proceedings to amend Rule 1161 are construed as proceedings involving a license, permit or other entitlement for use for purposes of section 84308. Board members having received the contributions are barred from voting on the Rule 1161 amendments.